

EXHIBIT 1

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No. 274057

90-4284/1222

DATE 09/10/2020

PAY TO THE

ORDER OF Facebook INC \$40.00

fourty and 00/100 DOLLARS

Case # 18cv00790

Client # 55107303

Order # 3830129

Document: Subpoena

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Danielle Crosby

PRINTED NAME

⑈ 274057 ⑈ ⑆ 122242843⑆ 657027611⑈

Case 1:18-cv-00790-KMW Document 52-1 Filed 09/01/20 Page 1 of 3
 EXHIBIT "A" of Notice of Intent

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

STEPHANIE SINCLAIR

Plaintiff

v.

MASHABLE, INC.

Defendant

Civil Action No. 1:18-CV-00790 (KMW)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Facebook, Inc.

(Name of person to whom this subpoena is directed)

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See attached areas of testimony sought in exhibit "1"

Place: Online video conference (Zoom or similar)

Date and Time:

10/15/2020 9:30 am PST

The deposition will be recorded by this method: online video conference technology

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: Any non-privileged, relevant documents or information that might substantiate or support deponent's testimony in any way.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/01/2020

CLERK OF COURT

OR

/s/ James H. Bartolomei Esq.

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) PLAINTIFF
 STEPHANIE SINCLAIR, who issues or requests this subpoena, are:

James Bartolomei, Esq., Duncan Firm, 809 W. 3rd St., Little Rock, AR 72201, (501) 228-7600, james@duncanfirm.com;
 Bryan Hoben, Esq., Hoben Law, 1112 Main St., Peekskill, NY 10566, (347) 855-4008, bryan@hobenlaw.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

9/10/2020

EXHIBIT “1”

Substance of Deposed Testimony Regarding Civil Action 1:18-CV-00790 (KMW)

1. Testimony. Testimony regarding Facebook, Inc.’s (“Facebook”) wholly owned and/or controlled entity, Instagram, LLC (“Instagram”) for the followed areas of inquiry:
 - a. Instagram’s “Terms of Use” in March 2016 and its application to Instagram's users;
 - b. Instagram’s “Platform Policy” in March 2016 for users of Instagram’s API embedding tool or technology;
 - c. Instagram’s “Platform Policy” in March 2016;
 - d. Instagram’s “Terms of Use” in March 2016;
 - e. Instagram’s API embedding technology or tool that, through computer programming code, causes a user’s content such as a photo to be displayed, transmitted, reproduced, framed, embedded, linked, inline linked, distributed, or otherwise used from an Instagram user’s account so as to appear, display or show on a third party web site such as Mashable.com;
 - f. Any communications or documents related to the case filed by Stephanie Sinclair versus Mashable, Inc., Case 1:18-CV-00790 (KMW), filed in the United States District Court for the Southern District of New York. This includes statements made to the media, the parties of that case or other person.
 - g. Instagram’s “Terms of Use” related to granting a license from a user to Instagram
 - h. Instagram’s “Terms of Use” or “Platform Policy” related to the process for granting Instagram API users a sub-license to content posted by Instagram users, as well as any training, guidelines or processes related to such.

- i. Instagram's policy or position that Instagram does not automatically grant a license or sub license for embedded photos or videos using the Instagram API.
 - j. Instagram's platform policies requiring third parties to have the necessary rights from applicable rights holders, including ensuring those third parties have a license to share photos and/or videos;
 - k. Instagram's policies or procedures for disputes regarding API user violations of Instagram's Platform Policy, including uses of Instagram's API code to display, transmit, reproduce frame, embed, link, inline like, distribute, or otherwise use an Instagram account holder's content without obtaining that user's permission or having other rights to do so.
 - l. Data collected by Instagram when a user's photo or video is embedded using the API technology, tool or code.
 - m. What Facebook is planning or intending to do to help users gain more control over their data and/or ability to track and/or discover Instagram embeds using the Instagram API (if Instagram is using or intends to use different terminology or different means than any available in 2016).
 - n. Facebook and/or Instagram's representation by the law firm of Davis Wright Tremaine, LLP and cases this law firm has provided legal representation for Facebook and/or Instagram.
2. Production. Any non-privileged, relevant documents or information that might substantiate or support deponent's testimony in any way.

Attorneys:
Phillip J. Duncan*
James H. Bartolomei III***
Richard L. Quintus**
Wm. Rob Pointer*
Timothy P. Reed*
J. Reid Byrd*

*Licensed in AR
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***Licensed in AR, CA, NY, FL, CT, & DC

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September 8, 2020

Via Janney & Janney Process Service

Mark Zuckerberg
Chairman and Chief Executive Officer
Facebook, Inc.
1601 Willow Park Road
Menlo Park, CA 94025

Adam Mosseri
Chief Executive Officer
Instagram, Inc.
181 South Park Street, Ste. 2
San Francisco, CA 94107

Re: *Sinclair v. Ziff Davis, LLC and Mashable, Inc.* (Civ. Action No. 1:18-cv-00790)

Dear Mr. Zuckerberg and Mr. Mosseri:

Please find enclosed a ***Subpoena to Testify at a Deposition in a Civil Action***, and a ***Notice of Deposition*** for Facebook Inc.'s testimony in the above-referenced federal case, which is filed in the Southern District of New York. With the subpoena, I have also enclosed an attendance fee check of **\$40.00** for your appearance at your deposition. Your deposition will take place via Zoom (or other equivalent online meeting software) on **October 15, 2020, beginning at 9:30 a.m. PST.**

Please have your legal counsel coordinate with me to provide you a link to attend this deposition.

Respectfully,

James H. Bartolomei
For Duncan Firm, P.A.

Enclosures

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 1:18-CV-00790 (KMW)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.: